

**AGREEMENT**  
**BETWEEN THE**  
**CITY OF SAN DIEGO**



**AND**

**UBICQUIA, INC.**

**FOR PUBLIC SAFETY**  
**SOLUTION**

## AGREEMENT

This Agreement (“Agreement”) is entered into by and between the City of San Diego, a municipal corporation (“City”), and Ubicquia Inc., a Delaware Corporation (“Ubicquia” or “Contractor”).

## RECITALS

A. The City of San Diego desires to contract with Ubicquia, Inc. for a hardware and software Public Safety Solution (as such term is defined in Exhibit A), under a subscription model, including automated license plate recognition ("ALPR") technology and situational awareness cameras located within a UbiHub, known as “Smart Streetlights” as further described in the Scope of Work, attached hereto as Exhibit A (the “Goods and Services”). Ubicquia has the expertise, experience, and personnel necessary to provide the Goods and Services.

B. City and Contractor (collectively, the “Parties”) wish to enter into an agreement whereby City will retain Contractor to provide the Goods and Services.

C. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

## ARTICLE 1 CONTRACTOR SERVICES

**1.1 Scope of Services.** Contractor shall provide the Goods and Services to the City as described in Exhibit A, Scope of Work, which is incorporated herein by reference.

**1.2 Contract Administrator.** The San Diego Police (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Goods and Services under the direction of a designated representative of the Department as follows:

NAME Charles Lara TITLE Lieutenant  
ADDRESS 1401 Broadway, San Diego, CA 92101 DEPT. San Diego Police  
Department  
PHONE 619-980-4149  
E-MAIL clara@pd.sandiego.gov

**1.3 General Contract Terms and Provisions.** This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit B.

**1.4 California Public Records Act.** Contractor acknowledges that this Agreement and information submitted to the City is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If Contractor

submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of Contractor to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, Contractor must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from disclosure under the CPRA. If Contractor does not provide a specific and detailed legal basis for requesting the City to withhold Contractor's confidential or proprietary information City will release the information as required by the CPRA and Contractor will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be Contractor's obligation to defend, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at Contractor's request. Furthermore, Contractor shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at Contractor's request.

Nothing in the Agreement creates any obligation on the part of the City to notify Contractor or obtain Contractor's approval or consent before releasing information subject to disclosure under the CPRA.

**1.5 Submittals Required with the Agreement.** Contractor is required to submit all forms and information delineated in Exhibit C before the Agreement is executed.

**1.6 Compliance with Use Policies.** Contractor shall comply with the applicable Use Policy for each specific technology, as may be amended from time to time, incorporated by reference and attached hereto as Exhibit D and Exhibit E. City agrees to provide reasonable advance written notice (no less than 120 days) to Contractor of changes to any Use Policy. To the extent such changes to any Use Policy materially change the rights or obligations of Contractor, Contractor may terminate this Agreement without any liability to City. The Parties agree to meet and confer in good faith regarding any Use Policy dispute prior to Contractor terminating the Agreement under this section.

## ARTICLE 2 DURATION OF AGREEMENT

**2.1 Term.** This Agreement shall be for a term of five years beginning on the Effective Date. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

**2.2** Contractor acknowledges that City's use of the technology described in this Contract is subject to annual City Council approval authorizing use of this technology in accordance with the Transparent and Responsible Use of Surveillance Technology Ordinance. In addition to the provisions in Article IV of Exhibit B, this Agreement may be terminated at any time if the use of this technology is not approved by City Council.

**2.3 Effective Date.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

### **ARTICLE 3 COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for Goods and Services rendered in accordance with this Agreement in an amount not to exceed \$11,662,500 or the amount referenced in the purchase order.

### **ARTICLE 4 LIMITATION OF LIABILITIES**

**4.1** Notwithstanding anything to the contrary in this Agreement, including any attachments thereof, in no event shall Ubicquia and/or its subcontractors or service providers be liable to the City or any third party for any loss of use, loss of data or diminution of value; and except under a Party's indemnification obligations or confidentiality obligation, neither Party shall be liable for any consequential, indirect, incidental, special or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damages were foreseeable and whether or not the Party has been advised of the possibility of such damages.

**4.2** In no event and notwithstanding anything to the contrary, shall Ubicquia and/or its subcontractors or service providers be liable to the City or any third for (i) error and interruption of use or loss or inaccuracy, incompleteness or corruption of data or footage or cost of procurement of substitute goods and services or technology; (ii) any matter beyond Ubicquia's actual knowledge or reasonable control, including repeat criminal activity or inability to capture images or Footage (as defined in Exhibit A) or identified and/or correlate a license plate with the FBI database; or (iii) for crime prevention.

**4.3** Notwithstanding anything to the contrary, in no event shall Ubicquia's aggregate liability arising out of or related to this Agreement, including any attachments thereof, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the total of the amount paid or owed to Ubicquia for the services provided to the City hereunder in the twelve (12) months prior to the act or omission that gave rise to the liability.

**4.4** The limitation of liability set forth in Article 4 shall apply only to the extent allowed by applicable law.

### **ARTICLE 5 WAGE REQUIREMENTS & BOND REQUIREMENTS**

**5.1. Wage Requirements.** This Agreement incorporates by reference the City's Wage Requirements, attached hereto as Exhibit C.

**5.2. Bonds Requirements.** Notwithstanding Article VIII of Exhibit B, Contractor shall not be required to provide any performance bond or any other Bonds to the City under this Agreement.

## ARTICLE 6 CONTRACT DOCUMENTS

**6.1. Contract Documents.** This Agreement including its exhibits: Exhibit A, Scope of Work, Exhibit B, General Contract Terms and Provisions, and any other Exhibits referred herein completely describes the goods and services to be provided.

**6.2. Order of Precedence.** In the event of any inconsistent or conflicting provisions among the contractual documents referenced in this Agreement, such conflicts or inconsistencies shall be resolved in the following order of precedence:

- (a) first, the provisions of this Agreement;
- (b) second, the provisions of the Scope of Services described in Exhibit A;
- (c) third, the provisions of General Contract Terms and Provisions attached in Exhibit B and the Wage Requirements attached in Exhibit C;
- (d) fourth, the provision of Flock Safety End User License Agreement, attached hereto as Exhibit F;
- (e) fifth, the provisions of the applicable Use Policy for each specific technology, attached in Exhibit D and Exhibit E; and
- (e) last, the provision of any other Exhibits or attachments referred herein. Without limitation of the foregoing, any additional, contrary, or different terms contained in any purchase order or other request or communication by a party pertaining to the provision of Goods and Services, and any attempt to modify, supersede, supplement or otherwise alter this Agreement, will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized representatives of both Parties.

**6.3. Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

## ARTICLE 7 – FORCE MAJEURE

In addition to the provisions of section 5.5.1 of Article V of Exhibit B, no Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of the City to make payments to Ubicquia hereunder), when and to the extent such failure or delay is caused by or results from Force Majeure Event(s). The Party impacted by the Force Majeure Event shall give notice within seven (7) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The foregoing notice obligation shall not apply when such Force Majeure Event is well documented in national or international news. The impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized, and will resume the performance of its obligations as soon as reasonably practicable after the Force Majeure Event expires. For the purpose of this Agreement, "Force Majeure Event" means (i) acts of God; (ii) flood, fire, earthquake, and other potential disaster or catastrophe, such as pandemic or epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor

stoppages or slowdowns (unless those are due to the impacted Party's actions or inaction), or other industrial disturbances; and (h) telecommunication breakdowns, power outages or shortages, or worldwide inability or delay in obtaining supplies of adequate or suitable materials; and (i) other events beyond the reasonable control of the impacted Party.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

UBICQUIA, INC.  
A Delaware Corporation

CITY OF SAN DIEGO  
A Municipal Corporation

By: Stephen Patak

Name: Stephen Patak

Title: Chief Revenue Officer

Date: 9/29/2023

By: \_\_\_\_\_

Name: \_\_\_\_\_

Director, Purchasing & Contracting

Date: \_\_\_\_\_

Approved as to form this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_

Deputy City Attorney

\_\_\_\_\_  
Print Name

## EXHIBIT A - SCOPE OF WORK

### A. OVERVIEW

The City of San Diego through the San Diego Police Department (“**Department**”) desires to contract with Ubicquia, Inc. for a hardware and software Public Safety Solution (as defined below) under a subscription model, including automated license plate recognition (“**ALPR**”) technology and situational awareness cameras located within a UbiHub, known as “Smart Streetlights.” The purpose of the Public Safety Solution is solely to facilitate gathering evidence that could be used in a lawful criminal investigation or administrative investigation and the location of missing persons (e.g., missing children or at-risk elderly persons) (the “**Permitted Purpose**”).

The City requires an initial quantity of 500 Units to be placed on streetlights at various locations within the City, to be operated and utilized as described herein.

The City will use video evidence, data and information obtained from the Public Safety Solution to conduct felony criminal investigations against persons and property, investigate traffic offenses that result in the loss of life, enhance responses to critical incidents and public threats, safeguard the lives of community members by using this technology to locate at-risk missing persons (including responding to Amber and Silver Alerts) and protect assets and resources of the City of San Diego.

The Public Safety Solution’s ALPR component will be used to identify vehicles associated with suspects, witnesses, or victims and enhance the Department’s ability to focus its investigative resources, deter the occurrence of crime, and increase public safety of the community.

ALPR is capable of and will be utilized to do the following.

1. Locating stolen, wanted, or vehicles which are the subject of investigations.
2. Locating vehicles belonging to witnesses and victims of a violent crime.
3. Locating vehicles associated with missing or abducted children and at-risk individuals.

### B. DEFINITIONS

The following definitions shall apply to this Agreement:

1. "**Aggregated Data**" means data and information related to the provision, use, and performance of the Public Safety Solution and optionally similar systems and technologies operated by other Ubicquia customers, that is used by Ubicquia in an aggregate manner, including to compile statistical and performance information related to the provision and operation of the Public Safety Solution. Aggregated Data derived solely from the provision, use, and performance of the Public Safety

Solution will not refer to or identify any individuals and is primarily used to determine (i) the operational health of the Services or (ii) the status of the Hardware in respect of its operation of the Embedded Software and/or connectivity to the Web Interface. Aggregated Data derived from the provision, use, and performance of the Public Safety Solution as well as from the operations of similar systems and technologies by other Ubicquia customers will not refer to or identify the City or any individuals and may be used to produce statistical and performance information related to the provision and operation of Ubicquia's products and services (including the Hardware, the Public Safety Solution, and the Services) and/or the improvement of same.

2. "**Authorized User(s)**" means any individual employees, agents, or contractors of the City accessing or using the Public Safety Solution through the Web Interface, under the rights granted to the City pursuant to this Agreement.
3. "**Automated License Plate Recognition**" ("**ALPR Camera**") means an image and video capture device configured to record, process, and upload vehicle or license plate images when the device is powered on and operational.
4. "**City Data**" means information, data, media and content provided by or to the City through the Public Safety Solution for purposes of enabling the City to access human-perceivable forms of the information, data, and other content produced by a Unit. City Data includes Footage and images but expressly excludes Product Platform Data.
5. "**CityIQ Units**" means the optical, audio, and environmental sensors that were deployed pursuant to the previously approved contract between the City and General Electric (GE) in December 2016.
6. "**Confidential Information**" means any non-public information that is treated as confidential by a Party, including but not limited to all non-public information about its business affairs, products or services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential." Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.
7. "**Disclosing Party**" means a Party that discloses Confidential Information under this Agreement.

8. **"Documentation"** means text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Public Safety Solution which are provided to City by Ubicquia (and/or its subcontractors) in accordance with the terms of this Agreement.
9. **"Embedded Software"** means software and/or firmware installed on the Hardware prior to or after installation, including any updates provided during the Term.
10. **"Footage"** means still images and videos captured by the Units during operation of and provided by the Public Safety Solution.
11. **"Hardware"** means a Ubicquia UbiHub<sup>®</sup> device, an ALPR Camera and/or a Situational Awareness Camera installed within a UbiHub, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Public Safety Solution.
12. **"Intellectual Property Rights"** means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
13. **"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.
14. **"Product Platform Data"** means data or information produced by a Unit during its operation, which informs as to the operational health or status of the Public Safety Solution. Examples of Product Platform Data include, but are not limited to, internal temperature data, internal data logs, memory usage, central processing unit usage, modem logs, last updated date, node identifier, serial number, name, received signal strength indication (RSSI) data, pole type, pole color, pole height, pole identifier, pole current, pole voltage, fixture wattage, brightness, burn hours, light status, firmware version, fixture current, fixture identifier, fixture off cycles, fixture on cycles, fixture power, fixture type, fixture voltage, global positioning satellite (GPS) data (including horizontal dilution of precision (HDOP) data, vertical dilution of precision (VDOP) data, longitude, latitude, availability), network type, photocell off threshold, photocell on threshold, photocell value, sag threshold, swell threshold, power line, frequency, node status, tag name, tilt angle, tilt threshold, update frequency, power factor state, and pulse wave modulation (PWM) frequency.

15. **"Project"** means the project as described in the Scope of Work.
16. **"Project Milestone"** means an event or task described in the Scope of Work which shall be completed by the relevant date set forth in the Scope of Work.
17. **"Public Safety Solution"** means the installation of UbiHub AP/AI devices with active situational awareness cameras utilizing Flock Safety's operating system, FlockOS, a with the option of including third-party ALPR cameras as ordered that are compatible with Flock's operating system and the UbiHub, and attached to a LED lighting fixture provided by Ubicquia that meets California's Department of Transportation standards and the City's lighting specifications, architectural design requirements on decorative poles, and other applicable requirements. These combined items comprise a **"Unit,"** which will communicate with Ubicquia's UbiVu cloud-based management platform for monitoring metering features of the UbiHub device and will interface with Flock OS to facilitate use of ALPR technology and video recording retrieval.
18. **"Receiving Party"** means a Party that receives or acquires Confidential Information directly or indirectly under this Agreement.
19. **"Situational Awareness Camera"** means the video cameras that are embedded on the UbiHub AP/AI device from Ubicquia. All deployed UbiHub devices shall have active situational awareness cameras.
20. **"Support and Maintenance Data"** means data and information related to the City's use of the Public Safety Solution that is usable alone or in an aggregate manner with similar data and information from Ubicquia's other customers to provide the Services to the City and/or to modify, repair, or improve the performance of the Public Safety Solution, or other products or services offered by Ubicquia, including to compile statistical and performance information related to the provision and operation of the Unit or the Public Safety Solution.
21. **"Ubicquia IP"** means the Public Safety Solution, the Embedded Software, the Hardware and the Documentation, and any and all intellectual property therein or otherwise provided to the City and/or its Authorized Users in connection with this agreement.
22. **"Unit"** means the Hardware and Embedded Software which comprise the **"Public Safety Solution,"** including UbiHub AP/AI devices with active situational awareness cameras that utilize FlockOS, and/or one of more third-party ALPR cameras that are compatible with Flock's operating system and a UbiHub, and attached to a LED lighting fixture provided by Ubicquia that meets California's Department of Transportation standards and the City's lighting specifications, architectural design requirements on decorative poles, and other applicable requirements. Units may be installed horizontally on the City's lighting fixtures, such as on Cobra Head LED lights, or vertically within the City's decorative poles found in locations throughout San Diego. All Units installed, on both horizontal

and vertical lighting fixtures, shall have activated situational awareness cameras and/or third-party ALPR cameras will be installed on horizontal lighting fixtures at locations determined by the City. Vertical lighting fixtures shall not be equipped with ALPR cameras.

- 23. "Web Interface"** means the website(s) or application(s) through which the City and its Authorized Users can access the Public Safety Solution in accordance with the terms of this Agreement.

**C. CONTRACTOR'S OBLIGATIONS**

**1. LICENSED PUBLIC SAFETY SOLUTION**

Ubicquia will provide City with a Public Safety Solution as defined.

**Ubicquia shall provide:**

- a. Installation of the Units on streetlights, streetlight poles, or locations as agreed upon by the Parties.
- b. Removal of installed CityIQ Units at locations where the Public Safety Solution is being implemented and Units installed, along with the safe transfer of removed CityIQ Units to a City representative responsible for storage.
- c. Subscription access to metering/power usage and other monitoring data and information provided by Ubicquia's UbiVu cloud-based management platform.
- d. Subscription access to the Flock Operating System ("FlockOS")
- e. Maintenance and customer support, as further described herein.

Subject to the terms of the Agreement, Ubicquia hereby grants to the City a non-exclusive, non-transferable, non-sublicensable (except to Authorized Users) right to access and use the features and functions of the Public Safety Solution via the Web Interface during the Term of this Agreement.

Subject to all terms of the Agreement, Ubicquia grants the City a limited, non-exclusive, non-transferable, non-sublicensable right to use the Embedded Software as installed on the Hardware; in each case, solely as necessary for the City to use the Public Safety Solution.

Ubicquia will also provide the City with the Documentation to be used in accessing and using the Public Safety Solution. Subject to the terms of this Agreement, Ubicquia hereby grants to the City a non-exclusive, non-transferable, non-sublicensable (except to Authorized Users) right and license to use the Documentation solely in connection with its use of the Public Safety Solution as contemplated herein and subject to confidentiality obligations stated in this Agreement.

Authorized Users will be required to sign up for an account and select a password and username. The system interface will operate within the City's OKTA platform and conform with the City and Department's I.T. standards, City I.T. administrative regulations and cybersecurity standard practices, as such have been provided to Ubicquia in writing. The City shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by the City, would constitute a breach of this Agreement, may be deemed a breach of this Agreement by the City. The City shall undertake reasonable efforts to make all its Authorized Users aware of the provisions of this Agreement as applicable to such Authorized Users and shall cause Authorized Users to comply with such provisions.

The City acknowledges that Ubicquia may subcontract and/or use third party providers to deliver the Public Safety Solution to the City. Ubicquia or its subcontractor shall provide a Web Interface to the Public Safety Solution. The City agrees to review the terms of any such third-party providers, and, subject to applicable laws, regulations and policies, and to the extent such terms are commercially reasonable, the City will not unreasonably withhold its consent to the terms, including without limitation the terms of the Flock Safety End-User Software License Agreement, attached hereto in Exhibit F, which is hereby approved by the City. To the extent the terms of any third-party provider conflict with the terms of this Agreement, the terms of this Agreement shall take precedence, as described in section 6.2 of the Agreement.

The City hereby acknowledges that unless the City extends the term of the Agreement upon expiration, all services and access to data from the Public Safety Solution shall terminate and will no longer be accessible to the City.

## **2. DELIVERY, INSTALLATION, SUBSCRIPTION, AND REMOVAL**

City shall issue a purchase order ("Purchase Order") for the 500 Units following the execution of this Agreement.

Ubicquia may, without liability or penalty, make partial shipments to the City. Ubicquia shall use reasonable efforts to meet any performance dates to render the services. Any such dates shall be estimates only.

Unless otherwise agreed in writing by the Parties, Ubicquia will deliver the Units to the City's delivery address stated in the Purchase Order (the "**Delivery Point**") using Ubicquia's standard methods for packaging and shipping such Units. Ubicquia shall be responsible for the delivery, unloading, and installation of the Public Safety Solution.

Prior to performing the physical installation of the Units, the Parties shall collaborate to identify locations ("**Designated Locations**") and proper positioning of the Units for optimal Footage capture, as conditions and locations allow. Ubicquia shall have no liability to the City resulting from any poor performance, functionality or Footage resulting or otherwise relating to any location or positioning imposed by the City against Ubicquia's recommendations. Furthermore, Ubicquia shall not be liable for any delay in installing the Units due to the City's delay in confirming the Designated Locations for said Units and/or delay in having such Designated Locations ready for installation, including without limitation, having proper electrical work and permits ready at such locations.

Upon installation, a City representative will activate each situational Awareness Camera before it becomes operational. Upon activation, the need for privacy masking will immediately be evaluated by a City representative and applied, if required. Once a City representative completes the digital masking, the situational Awareness Camera may begin operating.

After initial installation, and upon receiving any required approvals, the City may request that a camera be moved, re-positioned, reangled, or otherwise adjusted. The Parties shall work cooperatively to achieve the new, desired placement or position of the camera. After installation, any changes to the deployment plan (including without limitation camera re-positioning, adjustment, re-angling, changes to heights of positioning, and similar requests) and/or locations will be charged to the City at a rate of \$450 per location change.

The initial proposed locations correspond to the below web link which displays a map of proposed locations which may be amended up to the point of installation, or as needed in accordance with the provisions herein:

[Automated+License+Plate+Recognition+Impact+Report.pdf \(sandiego.gov\)](#)

The Units shall be installed in a workmanlike manner in accordance with applicable laws and Ubicquia's standard procedures.

Unless otherwise stated in the Agreement, this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in a Designated Location in which Ubicquia, or any of its subcontractors, is to perform services under this Agreement, Ubicquia shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

### **Optional Features and Services**

Any additional features or services, including noise/audio/gunshot detection and/or recording, vehicle and people counting, near misses, illegal dumping and geo-fencing, and behaviors monitoring, if available, may only be provided and activated upon written request and consent of the City after approval by the City Council pursuant to all applicable ordinances and regulations. The Parties shall confer and negotiate in good faith regarding pricing and specifications for these additional features or services. Ubicquia shall not include facial recognition technology in any product provided under this Agreement.

If the Parties agree in the future that third-party cameras, platforms and other operating systems owned by public entities or private parties are operable with the Public Safety Solution and compatible with the Public Safety Solution, and such funding and use is approved by the City Council according to all applicable City ordinances, the Parties may negotiate in good faith to facilitate use of such third-party cameras and platforms with the Public Safety Solution, including any additional costs that may apply.

### 3. LED LIGHTING SPECIFICATIONS

LED lighting fixtures (luminaires) shall replace the existing luminaires in accordance with the following equivalency crosswalk:

<b>Existing Luminaire</b>	<b>LED luminaire minimum output</b>
85W Induction	6,500 lumens
165 Induction	11,000 lumens
150W HPS	6,500 lumens
200W HPS	6,500 lumens
250W HPS	11,000 lumens
55W Induction	3,500 lumens
135W LPS	11,000 lumens

LED luminaires shall conform to the following light distribution types:

- Type II for all 3,500 Lumens fixtures
- Type II for 6,500 Lumens fixtures at mid-block locations
- Type III for 6,500 Lumen fixtures at intersections
- Type III for all 11,000 Lumen fixtures

Where an existing luminaire is fitted with a full or partial light shield, the new LED luminaire shall incorporate a functionally equivalent shield.

The color-corrected temperature of the LED luminaires shall be no greater than 4000K everywhere except for areas designated for a maximum of 3000K CCT (generally within 35 miles of Mt Palomar Observatory). Refer to “San Diego 3000 and 4000 Kelvin CCT Map” in Council Resolution R-306251.

### 4. CONNECTIVITY

All connectivity from Units (i.e., LTE backhaul) that provides video, images, or data to the City is to be provided through Ubicquia’s global carrier agreements.

### **D. SERVICE SUPPORT, REPAIR, MAINTENANCE, AND REPLACEMENT**

Ubicquia shall provide the following response times and service levels:

1. Ubicquia will monitor the performance and functionality of the Public Safety Solution and may, from time to time, advise the City on changes to the Public Safety Solution which may improve the performance or functionality of the Public Safety Solution or improve the quality of the Footage.
2. The City understands and agrees that Ubicquia does not monitor video or ALPR as it pertains to law enforcement functions.
3. Ubicquia may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of the

Hardware and/or the Embedded Software, or the efficiency or performance of the Public Safety Solution, or (ii) to comply with applicable laws and/or ordinances.

4. Ubicquia, and/or its representative, will provide the City with reasonable technical and on-site support and maintenance services (“On-Site Services”) in person or by email at [support@flocksafety.com](mailto:support@flocksafety.com), at no additional cost.
5. Any defective or damaged Unit will be repaired or replaced within 14 calendar days (unless products are not available due to any event outside of Ubicquia’s reasonable control).
6. To the extent that Ubicquia fails to replace a defective or damaged unit within 14 calendar days, Ubicquia shall provide a credit of \$10/unit/business day until such Unit is replaced.
7. The Public Safety Solution may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Ubicquia or by its service providers, or because of other causes beyond Ubicquia’s reasonable control, but Ubicquia shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption and minimize the time of such service disruption.
8. In addition to the terms of section 5.7 of Article V of Exhibit B, Ubicquia warrants that for a period of five (5) years from the date of shipment of a Unit ("**Warranty Period**"), the Unit will materially conform to its specifications and will be free from defects in material and workmanship. Ubicquia shall use reasonable efforts consistent with prevailing industry standards to maintain the Public Safety Solution in a manner which minimizes errors and interruptions and shall perform its services in a professional and workmanlike manner, using personnel of required skill, experience, and qualifications and shall devote adequate resources to meet its obligations under this Agreement. Ubicquia does not warrant that the Public Safety Solution will be uninterrupted or error free; nor does Ubicquia make any warranty as to the results that may be obtained from the Public Safety Solution. Except for the warranties stated in this Section D.8, and section 5.7 of Article V of Exhibit B, to the extent applicable, the Public Safety Solution is provided “as is” and Ubicquia disclaims all other representations or warranties of any kind, express, implied or statutory, with respect to the Hardware, the Public Safety Solution, or the services, including implied warranties of merchantability or fitness for a particular purpose, non-infringement or other warranties. This statement only applies to the extent permitted by law.

**E. PROJECT MILESTONES**

Ubicquia will exercise commercially reasonable efforts to provide, install, and activate 250 Units per month, up to the total quantity of Units ordered.

**F. QUANTITIES**

Ubicquia will provide and City agrees to initially order 500 Units to be installed horizontally with ALPR cameras on City light poles in Fiscal Year (FY) 2024 (July 1, 2023 – June 30, 2024).

Order and installation of additional Unit quantities under the terms and conditions herein is permitted but is contingent on City Council approval in accordance with the Transparent and Responsible Use of the Surveillance Technology Ordinance and on appropriation of funding for the applicable fiscal year.

Pricing for additional Units shall be set in accordance with section G, consistent with section 3.4 of Article III of Exhibit B.

**G. PRICING AND FEES**

**1. ACTIVATION FEE**

City shall pay \$1,500,000 as the Activation Fee pursuant to Section H.1 below.

Ubicquia acknowledges and agrees that no additional fees shall be owed by City, unless specified otherwise in this Section G. The Activation Fee includes:

- a. Installation of the 500 Units and any future Units approved by City Council at the Designated Locations as agreed upon by the Parties.
- b. Removal of installed CityIQ Units at locations where the Public Safety Solution is being implemented and Units installed, along with the safe transfer of removed CityIQ Units to a City representative responsible for storage.
- c. Installation of the Units, and commencement of the services pursuant to the Project Milestone schedule in section E.
- d. After initial installation, the City may request that a camera be moved, re-positioned, re-angled, or otherwise adjusted. The Parties shall work cooperatively to achieve the new, desired placement or position of the camera. After installation, any changes to the deployment plan (including without limitation camera re-positioning, adjustment, re-angling, changes to heights of positioning, and similar requests) and/or locations will be charged to the City at a rate of \$450 per adjustment or location change within 1/10 of a mile.

Additional charges may be required based on traffic mitigation required by the City.

## **2. ANNUAL FEE**

- a. For horizontally mountable Units, \$4,025 per Unit per year.
- b. For vertically mountable Units, the price will be \$4,500 per Unit per year (to ensure it coincides with the City's architectural requirements on decorative poles).

“**Annual Fee**” includes all costs (including connectivity cost and maintenance and customer support, as described in section D.) for the Public Safety Solution and the services as provided herein. Ubicquia is responsible for all shipping costs. The City agrees to pay applicable sales tax associated with the Public Safety Solution (if any). Unless specified otherwise, the Annual Fee shall be non-refundable.

## **H. PAYMENT TERMS**

Activation Fee of \$1.5 million is due for the initial order of 500 Units, according to the schedule in this section H. No additional Activation Fee shall be owed for any additional Units ordered and authorized by City Council (if any).

### **1. PAYMENT SCHEDULE**

The Activation Fee shall be paid Net 30 days from the date of invoice as follows:

- a. Milestone payment of \$600,000 (40%) may be invoiced upon issuance of Purchase Order.
- b. Milestone payment of \$450,000 (30%) may be invoiced upon completion of installation of 250 units.
- c. Milestone payment of \$450,000 (30%) may be invoiced upon completion of installation of the remaining 250 Units.

The Annual Fee of \$2,012,500 for the initial order of 500 Units (and any subsequent orders) may be invoiced upon issuance of a Purchase Order. Any future Annual Fee shall be owed at the anniversary date of the first Purchase Order; provided however that Ubicquia shall provide a credit applicable toward the first renewal of the Annual Fee for each month when the Units were not installed and City did not have access to the Public Safety Solution for such Units.

## **I. DATA OWNERSHIP**

The City shall own City Data and will provide Ubicquia a limited license to use such City Data for purposes of providing its services, including the Public Safety Solution.

All rights, title, and interest in and to the City Data belong to and are retained solely by the City. The City hereby grants to Ubicquia (i) a limited, non-exclusive, royalty-free, worldwide license to use the City Data and perform all acts with respect to the City Data as may be necessary for Ubicquia to provide its services to the City, including without limitation to provide the Public Safety Solution, and (ii) a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to include the City Data as a part of the Aggregated Data.

Ubicquia shall own Product Platform Data, Support, and Maintenance Data, and all the software, firmware, and other processes used in the Public Safety Solution and/or services to produce or process City Data, Product Platform Data, and/or Support and Maintenance Data.

To the extent that Ubicquia is required by local, state, or federal law to preserve City Data, Ubicquia will notify the City of the requirement and applicable retention period, and the City agrees to preserve and securely store applicable City Data on Ubicquia's behalf so that should Ubicquia, or any of its vendors or contractors, be legally compelled by judicial or government order, Ubicquia may retrieve the applicable City Data from the City upon written demand.

The City hereby grants Ubicquia a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Term) to (i) use and distribute Aggregated Data to improve and enhance the services and for other development, diagnostic, and corrective purposes, other Ubicquia offerings, and crime prevention efforts. No rights or licenses are granted except as expressly set forth herein. Ubicquia shall not sell City Data or Aggregated Data to third parties. Ubicquia shall not share or provide City Data to third parties except in compliance with a legal requirement.

**J. RETENTION OF DATA AND FOOTAGE**

The Footage will be available for the City's Authorized Users to access via the Web Interface for thirty (30) days for ALPR and 13 days for video from the Situational Awareness Cameras.

Ubicquia, and/or its vendor or subcontractor, may access, use, and preserve the Footage, if legally required to do so or if Ubicquia has a good faith belief that such access, use, preservation, or disclosure is reasonably necessary to:

1. Comply with a legal process or request;
2. Detect, prevent, or otherwise address security, fraud, or technical issues; or
3. Protect the rights, property, or safety of Ubicquia, its vendors or contractors, or the public as required or permitted by law, including in response to an emergency.

Ubicquia shall automatically delete video Footage from Situational Awareness Cameras older than thirteen (13) days. The City has a thirteen (13) day window to view, save and/or transmit Footage from Situational Awareness Cameras for its criminal or administrative investigations prior to deletion. Ubicquia shall not store or retain deleted Footage in any manner.

Ubicquia shall automatically delete ALPR images older than thirty (30) days. The City has a thirty (30) day window to view, save and/or transmit ALPR images for its criminal or administrative investigations prior to deletion. Ubicquia shall not store or retain deleted ALPR images in any manner.

Ubicquia shall ensure that all video images saved on the device that are not part of an active investigation are overwritten every 13 days and that all ALPR data is overwritten after 30 days.

## **K. INTELLECTUAL PROPERTY OWNERSHIP**

Ubicquia owns or will license or otherwise acquire all rights necessary to manufacture, sell or lease, distribute, and perform the Public Safety Solution and the services. Consistent with section 6.5 of Article VI of Exhibit B, Ubicquia agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all third party claims, actions, costs, judgments, or damages, of any type (“Claim”), alleging that Ubicquia has infringed the copyright, trademark, patent, or other intellectual property or proprietary rights of another in providing the Goods and Services described in this Agreement. If the Goods and Services, or any part thereof, become, or in Ubicquia’s opinion is likely to become, subject to a third-party Claim that qualifies for intellectual property indemnification coverage under this Section K, Ubicquia shall, at its sole option and expense (i) procure for the City the right to continue the use of the Goods and Services, (ii) replace or modify the Good or Services to make its sale or use non-infringing while being capable of complying with all material requirements of the Public Safety Solution, or (iii) with written City approval, terminate the Agreement and refund the City a pro-rata amount of any prepaid fee. Unless prohibited by applicable law, City shall promptly notify Ubicquia of any Claim. Ubicquia shall have full control over the defense and/or any settlement of the Claim; provided, however that City shall have the right, but not the obligation, to participate in the defense of the Claim at its own expense and through counsel of its choice. Notwithstanding the foregoing, Ubicquia agrees and acknowledges that agreement to settlements above certain dollar limits may require the approval of the City Council pursuant to the provisions of Council Policy 000-09.

Notwithstanding sections 6.1 – 6.4 of Article VI of Exhibit B, all right, title, and interest to intellectual property embodied, contained, implemented, or otherwise used in or with the Goods and the Services shall remain solely and exclusively with Ubicquia and/or its licensor(s) unless otherwise affirmatively and expressly granted to the City in the Agreement. If the City provides any suggestions, ideas, enhancement requests, feedback, recommendations, or other information relating to the Public Safety Solution or any other Ubicquia IP (collectively, “**Feedback**”), the City hereby assigns (and will cause its agents and representatives to assign all right, title and interest in and to the Feedback (including all intellectual property rights therein) to Ubicquia.

The City will not, and will not permit any Authorized Users to:

1. Copy or duplicate any of the Ubicquia IP;
2. Decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Ubicquia IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Ubicquia IP, or attempt to do any of the foregoing, and the City acknowledges that nothing in this Agreement will be construed to grant to the City any right to obtain or use such source code;
3. Modify, alter, tamper with, or repair any of the Ubicquia IP, or create any derivative work or product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Ubicquia;

4. Interfere or attempt to interfere in any manner with the functionality or proper working of any of the Ubicquia IP;
5. Remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Ubicquia IP (including the Public Safety Solution);
6. Use the Public Safety Solution, a Unit, the Documentation, or the Ubicquia IP for anything other than the Permitted Purpose; or
7. Assign, sublicense, sell, resell, lease, rent, or otherwise transfer or convey, or pledge as security or otherwise encumber any of the Units or the City's rights under this Agreement.

**L. UNIT OWNERSHIP**

The Units, with the exception of the LED lighting fixture provided under the terms of this Agreement, shall be and remain owned by Ubicquia. Ubicquia will grant City all permissions and rights necessary with respect to the Units to facilitate installation and enable City to fulfill its obligations in this Agreement. Upon expiration or termination of the Agreement, Ubicquia shall remove all Units and delete any City Data contained in them at no additional cost to the City. All Units shall be removed no later than ninety (90) calendar days after expiration or termination of the Agreement. The LED lighting fixture, a component of the Unit, shall be owned by the City once installed.

During the Term of the Agreement, the City shall not perform any acts which would interfere with the retention of title to the Units by Ubicquia. During the term of the Agreement, the City may not alter, remove, or obstruct any marks or warnings on the Units.

The City is not permitted to remove, reposition, re-install, disassemble, tamper with, alter, adjust, or take possession or control of the Hardware. The City further acknowledges and agrees that all warranties provided by Ubicquia herein shall be null and void if the City breaches its obligation under this section.

**M. PERMITS**

The City will obtain, maintain, and comply with all permits, governmental permissions and/or regulations, statutes, ordinances, and other authorizations (if any) required or necessary for Ubicquia to provide the Public Safety Solution, including all permits and permissions necessary to install and operate the Units at the Designated Locations agreed upon by the Parties.

**N. CONFIDENTIALITY, DATA PRIVACY LAWS, AND OTHER APPLICABLE LAWS**

Ubicquia shall encrypt City Data pursuant to customary industry standards (as of Effective Date, AES-256-GCM). Ubicquia shall require all subcontractors or third-party providers to comply with all applicable data protection and privacy obligations, including legal requirements,

restrictions on disclosure, and sharing of City Data contained in this Agreement.

The City agrees to use and store City Data in compliance with all applicable local, state, and federal laws, regulations, policies, and ordinances and their associated record retention schedules. No data shall be stored on City hardware unless downloaded from the Public Safety Solution for use in a qualifying investigation and maintained in an active case file.

Unless compelled by search warrant, valid subpoena, or other court order, City Data shall never be shared by any party, subcontractor, including any third-party provider, with Immigration and Customs Enforcement or Border Patrol for the purpose of enforcing immigration laws, in accordance with California Government Code section 7284.6 – The California Values Act.

Unless compelled by search warrant, valid subpoena, or other court order, City Data shall never be released to aid in the prosecution of an individual for providing, obtaining, or assisting in the provision or obtention of an abortion or any reproductive care, in accordance with California Penal Code section 13778.2.

Unless compelled by search warrant, valid subpoena, or other court order, City Data shall never be shared with any federal task forces that involve in any manner the investigation or prosecution of federal crimes for conduct that is permitted under California law.

Unless compelled by search warrant, valid subpoena, or other court order, City Data shall not be released to outside sources, except the San Diego City Attorney and San Diego District Attorney in accordance with legal proceedings or California law enforcement agencies for the express purpose of investigating cross-jurisdictional Part I crimes, until the adoption of a third-party data sharing use policy by the City Council.

Contractor agrees to notify City immediately upon receipt of a search warrant, subpoena, or other court order demanding disclosure of City Data, and if permitted by law, an opportunity to oppose the disclosure of City Data.

No terms should be interpreted as limiting the use of collected data for legitimate purposes by prosecutors or others legally permitted to receive evidence under law.

The City agrees to indemnify Ubicquia for any liability incurred based on the City's breach of applicable laws through its use of the Public Safety Solution and the services.

All Confidential Information disclosed to a Party in connection with this Agreement is confidential to the Disclosing Party and solely for use by the Receiving Party to exercise its rights or perform its obligations under this Agreement and may not be disclosed to any Person unless authorized in advance by the Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information (i) to the Receiving Party's employees or representatives, who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under this Agreement; (ii) to the limited extent required to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, including without limitation the California Public Records Act, provided that the Receiving Party shall first have given written notice to the Disclosing Party and

made reasonable efforts to obtain a protective order; or (iii) to establish the Receiving Party's rights under this Agreement, including to make required court filings.

On the expiration or termination of the Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed; provided however, that the Receiving Party will not be obligated to destroy any Confidential Information contained in wherever located, and the Receiving Party may retain copies of any portion of the Confidential Information, subject to the confidentiality terms of this Agreement, in accordance with its ordinary course records retention procedures or as otherwise required for legal or regulatory purposes. The Receiving Party's obligations of non-disclosure with regard to the Disclosing Party's Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the Receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

## **O. CITY OBLIGATIONS**

The City will use the Public Safety Solution and the services provided by Ubicquia for the purposes for which they were designed, and only in compliance with the Documentation, specifications and user guides as provided by Contractor (if any) and all applicable laws.

The City may not make any alterations, changes, replacements, or additions to the Units unless permitted by Ubicquia in writing.

During the Term, the City will store installed Units when performing maintenance on a streetlight, or streetlight pole, in substantially the same condition as they were when originally shipped to the City, with reasonable wear and tear excepted.

The City agrees to supply a power source, in compliance with Ubicquia's requirements, at each site where a Unit is installed. The power must be available on a 24-hour, 7 days per week (24/7) basis.

The City agrees to allow Ubicquia and/or its agents or subcontractors reasonable access in and near the Designated Locations for the purpose of performing installation and maintenance work. The City agrees to use its best efforts to facilitate:

1. Traffic management;
2. Road or lane closures; and
3. Other similar authorizations or requirements needed to complete the installation and maintenance of the Units.

The City represents and warrants that the Designated Locations are suitable for the installation of the Units, including without limitation, having the capacity to sustain the additional

load from the Units, or complying with applicable safety and building codes and regulations.

The City represents and warrants that it has all necessary rights, permissions and authority to allow Ubicquia to install the Units at the Designated Locations and to maintain such Units at such Designated Locations during the Term.

The City agrees to provide Ubicquia with accurate, complete, and updated Authorized User information as such may be reasonably requested by Ubicquia from time to time.

When setting up its user account and user credential, the Authorized User must clearly identify themselves and may not use another Person's name with the intent to impersonate that Person. The City may not transfer its account to, or share its account or password with, anyone else without prior written permission of Ubicquia and must protect the security of its account and password. The City is responsible for any activity associated with its account. The authorized user shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access, or otherwise use the Public Safety Solution.

The City agrees to provide assistance to Ubicquia, its vendors, or subcontractors, including, but not limited to, providing access to, and use of, the City's facilities, and assistance from its personnel, to the limited extent reasonably necessary to enable Ubicquia to perform its obligations under this Agreement.

If Ubicquia's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the City or its agents, subcontractors, consultants, or employees, Ubicquia shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by the City, in each case, to the extent arising directly or indirectly from such prevention or delay.

**P. SUSPENSION**

Ubicquia may temporarily suspend City's and any Authorized End User's access to any portion or all of the Ubicquia IP if (a) there is a threat or attack on any of the Ubicquia IP by City; (b) City's or any Authorized End User's use of the Ubicquia IP disrupts or poses a security risk to the Ubicquia IP or any other customer or vendor of Ubicquia; (c) City or any Authorized End User is/are using the Ubicquia IP for fraudulent or illegal activities; (d) City has violated any term of this provision, including, but not limited to, utilizing Public Safety Solution for anything other than the Permitted Purpose; or (e) any unauthorized access to the Public Safety Solution through City's account ("Service Suspension"). City shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit.

## EXHIBIT B



**THE CITY OF SAN DIEGO**

**GENERAL CONTRACT TERMS AND PROVISIONS**

**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

**AS MODIFIED AND AGREED BETWEEN THE PARTIES**

## ARTICLE I SCOPE AND TERM OF CONTRACT

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Agreement to which these General Terms and Provisions are attached.

**1.2 Effective Date.** The Agreement between the City and Contractor (“Contract”) is effective on the last date that the contract is signed by the Parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the Parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract during the original term of the Contract.

## ARTICLE II CONTRACT ADMINISTRATOR

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor’s performance as often as the Contract Administrator deems necessary throughout the term of the Contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor’s response, in evaluating future proposals and bids for contract award.

**2.2 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent  
City of San Diego, Purchasing and Contracting Division 1200 3<sup>rd</sup> Avenue, Suite 200  
San Diego, CA 92101-4195

Notices to Contractor shall be sent to:  
Ubicquia, Inc., 401 East Las Olas Blvd, suite 1750, Fort Lauderdale, FL 33301

## ARTICLE III COMPENSATION

**3.1 Manner of Payment.** Contractor will be paid Net30, in arrears, for goods and/or services provided in accordance with the Exhibit A - Scope of Work section H Payment Terms and terms and provisions specified in the Contract.

### **3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for such services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

#### **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. Contractor discharges City of all of City's future payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any material obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services as specified in the Contract; (2) failed to perform any of the material obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within thirty (30) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City, City shall not be entitled to a refund for paid services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill a material Contract obligation to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, City shall not be entitled to a refund for paid services. If it is determined that Contractor had materially breached the Contract, City shall be entitled to a partial refund pro-rated to the date of termination. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** Unless specified otherwise, the City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

**5.3 Responsibility for Damages.** Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the Parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof reasonably satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, and City approves such delay in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to materially alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If

Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Subject to applicable laws and confidentiality obligations, Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all such reasonably requested data and records electronically within a reasonable time from written request. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City, subject to confidentiality obligations. The parties hereby agree to discuss in good faith any restricted disclosures based on confidentiality obligations; provided however that information regarding Contractor's intellectual property (including without limitation information relating to patents, patent applications, works of authorship, prototypes, inventions, algorithms, software programs, development, and design details and specifications) and trade secrets shall be considered confidential.

**5.10 Quality Assurance Meetings.** Upon City's written request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and to Contractor’s knowledge, do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense to the extent such expense is commercially reasonable, non-infringing materials, deliverables or works as a means of remedying any claim of infringement. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor’s work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that to its knowledge, the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify

and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, directly or indirectly, in whole or in part, any goods provided or performance of services by Contractor, or subcontractor, or anyone employed by either of them under this Contract. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.8 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.9 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## ARTICLE VIII BONDS

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the

warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least “A-, VIII.”

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days’ advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City’s ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor’s agreement to abide by the provisions of the City’s Council Policy and any applicable access laws and regulations.

**9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City’s Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City’s EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal

opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**9.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. Both Parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE XII MANDATORY ASSISTANCE**

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to reasonably assist in resolving the dispute or litigation upon City's written request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur outside counsel's expenses and/or costs. Contractor agrees that any attorney's fees it may incur as a result of Mandatory Assistance provided under Section 12.2 are not reimbursable.

## **ARTICLE XIII MISCELLANEOUS**

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval, such approval not to be unreasonably delayed, withheld or conditioned. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee. Nothing contained herein shall prevent Contractor from subcontracting any of its obligations under this Contract and any attachment thereof with prior written notification.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including reasonable costs for substitute performance, sustained as a result of such violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any Parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The Parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or

attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** Subject to the terms of this Agreement, all services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

**EXHIBIT C**  
**CITY REQUIRED FORMS**

Contractor Standards Pledge of Compliance

Business Tax Certificate

Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report

Insurance Certificates with all endorsements, if applicable

Living Wage Certification form, if applicable

Taxpayer Identification Form W-9 (if not currently on file)

**WAGE REQUIREMENTS: SERVICE AND MAINTENANCE CONTRACTS EXECUTED ON OR  
AFTER JANUARY 1, 2015**

By signing this Contract, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

**A. PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

**1. Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

**1.1.** Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Bidder and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date

of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

**2. Penalties for Violations.** Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

**3. Payroll Records.** Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

**4. Apprentices.** Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**5. Working Hours.** Bidder and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**6. Required Provisions for Subcontracts.** Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**7. Labor Code Section 1861 Certification.** Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Bidder certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

**8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when

payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

**9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**9.1.** A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

**9.2.** A Contract entered into with any Bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

**9.3.** By submitting a bid or proposal to the City, Bidder is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Bidder shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

**10. Stop Order.** For Bidder or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Bidder or unregistered subcontractor(s) on ALL public works until the unregistered Bidder or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

**11. List of all Subcontractors.** The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers,

utilized on this contract at any time during performance of this contract, and Bidder shall provide the list within ten (10) working days of the City's request. Additionally, Bidder shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Bidder until at least 30 days after this information is provided to the City.

**12. Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Bidder shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

**12.1. Registration.** The Bidder will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

**12.2. Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Bidder will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

**12.3. List of all Subcontractors.** The Bidder shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

**B. Living Wages.** This Contract is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

**1. Payment of Living Wages.** Pursuant to San Diego Municipal Code section 22.4220(a), Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.

**1.1** Copies of such living wage rates are available on the City website at <https://www.sandiego.gov/purchasing/programs/livingwage/>. Bidder and its subcontractors shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).

**1.2** LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

**2. Compensated Leave.** Pursuant to San Diego Municipal Code section 22.4220(c), Bidder and its subcontractors shall provide a minimum of eighty (80)

hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

**3. Uncompensated Leave.** Bidder and its subcontractors must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.

**4. Enforcement and Remedies.** City will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should Bidder or its subcontractors are found to be in violation of any of the provisions of the LWO.

**5. Payroll Records.** Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City.

**5.1** For contracts subject to both living wage and prevailing wage requirements, only one submittal will be required. Submittals by a Bidder and all subcontractors must comply with both ordinance requirements.

**6. Certification of Compliance.** San Diego Municipal Code section 22.4225 requires each Bidder to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of Award of the Contract.

**7. Annual Compliance Report.** Bidder and its subcontractors must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.

**8. Exemption from Living Wage Ordinance.** Pursuant to San Diego Municipal Code section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Bidder must complete the Living Wage Ordinance Application for Exemption.

**C. Highest Wage Rate Applies.** Bidder is required to pay the highest applicable wage rate where more than one wage rate applies.

**City of San Diego**  
**CONTRACTOR STANDARDS**  
**Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

**A. BID/PROPOSAL/SOLICITATION TITLE:**

Public Safety Solution Proposal

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**B. BIDDER/PROPOSER INFORMATION:**

Ubicquia, Inc.

Legal Name 401 East Las Olas Blvd, suite 1750	Fort Lauderdale	DBA Florida	333301
Street Address Kyle Brown	City	State	Zip
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?

Yes       No

If **Yes**, use Attachment "A" to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

Yes       No

If **Yes**, use Attachment "A" to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

**D. BUSINESS ORGANIZATION/STRUCTURE:**

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment "A" if more space is required.

**Corporation** Date incorporated: 07 / 15 / 2021 State of incorporation: Delaware

List corporation's current officers: President: see attachment A  
 Vice Pres: \_\_\_\_\_  
 Secretary: \_\_\_\_\_  
 Treasurer: \_\_\_\_\_



If **Yes**, use Attachment "A" to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

**Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

**Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?      NO

6. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: First Republic Bank

Point of Contact: Justine Almeraris

Address: 111 Pine St. San Francisco, CA 94111

Phone Number: 212-259-4006

7. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

**Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

**Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

**Yes**       **No**

If **Yes**, use Attachment "A" to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes  No

If **Yes**, use Attachment "A" to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes  No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes  No

If **Yes**, use Attachment "A" to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Company Name: City of Los Angeles

Contact Name and Phone Number: Clinton Tsurui 213-670-5422

Contact Email: clinton.tsurui@lacity.org

Address: 200 N. Spring Street Los Angeles CA 90012

Contract Date: June 2022

Contract Amount: est. \$10M

Requirements of Contract: Technology as a service

Company Name: City of Dallas

Contact Name and Phone Number: Jacob McCarroll (214) 671-0251

Contact Email: jacob.mccarroll@dallas.gov

Address: 15 Marilla Street, Dallas TX 75201

Contract Date: September 2022

Contract Amount: est. \$1M/year - 4 years contract

Requirements of Contract: Technology as a service

Company Name: City of Ontario

Contact Name and Phone Number: Ron Ivie (208) 867-4645

Contact Email: Rivie@ontarioca.gov

Address: 303 E. B Street, Ontario CA. 91764

Contract Date: August 2021

Contract Amount: est. \$2M/year - 5 year contract

Requirements of Contract: Technology as a service

#### G. COMPLIANCE:

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?

Yes  No

If **Yes**, use Attachment "A" to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?

Yes  No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

#### H. BUSINESS INTEGRITY:

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?

Yes  No

If **Yes**, use Attachment "A" to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes  No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?

Yes  No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

**I. WAGE COMPLIANCE:**

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local prevailing, minimum, or living wage laws? Yes  No  If Yes, use Attachment "A" to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

**J. STATEMENT OF SUBCONTRACTORS:**

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment "A" if additional pages are necessary. If no subcontractors will be used, please write "Not Applicable."

Company Name: South Coast Lighting and Design Inc.

Contact Name and Phone Number: Erik Dague 303-888-4899

Contact Email: erikd@southcoastlighting.com

Address: 1101 via Callejon, San Clemente CA 92673

Contract Date to be determined

Sub-Contract Dollar Amount: to be determined

Requirements of Contract: Project management and installation

What portion of work will be assigned to this subcontractor: to be determined

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES  NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

Company Name: \_\_\_\_\_

Contact Name and Phone Number: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Date \_\_\_\_\_

Sub-Contract Dollar Amount: \_\_\_\_\_

Requirements of Contract: \_\_\_\_\_

\_\_\_\_\_

What portion of work will be assigned to this subcontractor: \_\_\_\_\_

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or OBE? (Circle One) YES  NO

If YES, Contractor must provide valid proof of certification with the response to the bid or proposal.

**K. STATEMENT OF AVAILABLE EQUIPMENT:**

List all necessary equipment to complete the work specified. Use *Pledge of Compliance Attachment "A"* if additional pages are necessary. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San Diego reserves the right to reject any response when, in its opinion, the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective manner for the duration of the contract period.

If no equipment is necessary to complete the work specified, please write "Not Applicable."

Equipment Description: UbiHub AP6

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: as needed

Year, Make & Model: 2023 UBH-H-WI-01-01-00-00-00-GY

Explanation: \_\_\_\_\_

Equipment Description: UbiHub AP/AI

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: as needed

Year, Make & Model: 2023 UBH-H-AI-01-01-11-00-00-GY

Explanation: \_\_\_\_\_

Equipment Description: Axis Cameras

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: as needed

Year, Make & Model: P1465-LE 29MM

Explanation: \_\_\_\_\_

**L. TYPE OF SUBMISSION:** This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated \_\_\_\_/\_\_\_\_/\_\_\_\_.

**Complete all questions and sign below.**

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

(a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

(b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).

(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

(d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

(e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

**Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.**

Stephen Patak  
Name and Title

Chief Revenue Officer

DocuSigned by:  
*Stephen Patak*  
Signature 92546229726499...

8/24/2023

Date

**City of San Diego  
CONTRACTOR STANDARDS  
Pledge of Compliance Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

**Questions C & D:**

Ubicquia was originally created in 2015, as a Florida limited liability company, known as Ubicquia LLC.

The Company converted to a Delaware limited liability company in 2018.

In 2021, the Company converted to a Delaware corporation and changed its name to Ubicquia, Inc.

**Question D:**

Officers of the Company are:

Ian Aaron - CEO

Stephen Patak - CRO

Peter Aloumanis - COO

Santiago Serrano - CFO

Heather Ritchie - CMO

Mansour Ghomeshi - General Counsel/Corporate Secretary

**Question F-3:**

On 1/10/2022, Ubicquia, Inc. entered into a Settlement Agreement with the City of San Diego in connection with a contractual dispute; however the Settlement Agreement was not the result of a lawsuit.

**Question K:**

All equipment used is owned by the Company. The LPR and video feeds will be delivered to SDPD via Flock OS.

**General Statement:**

All answers provided herein are to the knowledge of the Officers of the Company (as listed above)

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



### EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue, Suite 200 • San Diego, CA 92101  
Phone: (619) 236-6000 • Fax: (619) 236-5904

## WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

#### NO OTHER FORMS WILL BE ACCEPTED CONTRACTOR IDENTIFICATION

Type of Contractor:  Construction  Vendor/Supplier  Financial Institution  Lessee/Lessor  
 Consultant  Grant Recipient  Insurance Company  Other

Name of Company: Ubicquia, Inc.

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 401 E. Las Olas Blvd. , Suite 1750

City: Ft. Lauderdale County: USA State: FL Zip: 33301

Telephone Number: (305)775-1510 Fax Number: \_\_\_\_\_

Name of Company CEO: Ian Aaron

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

Type of Business: Smart City Products and Services Type of License: \_\_\_\_\_

The Company has appointed: Steve Badillo

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 401 E Las Olas Blvd, Suite 1750, Fort Lauderdale, FL 33301

Telephone Number: 305-775-1510 Fax Number: \_\_\_\_\_ Email: sbadillo@ubicquia.com

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Ubicquia, Inc.

(Firm Name)

Broward, Florida hereby certify that information provided  
(County) (State)

herein is true and correct. This document was executed on this 22 day of August, 2023

DocuSigned by:

Steve Badillo

646D23721AA242B...  
(Authorized Signature)

Steve Badillo

8/22/2023

(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**NAME OF FIRM: Ubicquia, Inc.DATE: 8/22/2023

OFFICE(S) or BRANCH(ES): \_\_\_\_\_

COUNTY: \_\_\_\_\_

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |                                      |   |
|--------------------------------------|---|
| (1) Black or African-American        | (5) Native Hawaiian or Pacific Islander                 |
| (2) Hispanic or Latino               | (6) White   |
| (3) Asian                            | (7) Other race/ethnicity; not falling into other groups |
| (4) American Indian or Alaska Native |   |

Definitions of the race and ethnicity categories can be found on Page 4

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial	1	1	9	2	3	0	0	0	0	0	19	6	0	0
Professional	1	0	3	2	0	1	0	0	0	0	6	6	0	0
A&E, Science, Computer	0	2	8	1	7	2	0	0	0	0	14	1	0	0
Technical	2	0	6	0	0	0	0	0	0	0	11	0	0	0
Sales	0	0	2	1	1	0	0	0	0	0	20	4	0	0
Administrative Support	4	0	1	5	2	0	0	0	0	0	1	0	0	0
Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Crafts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operative Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transportation	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column	8	3	29	11	13	3	0	0	0	0	71	17	0	0
--------------------	---	---	----	----	----	---	---	---	---	---	----	----	---	---

<b>Grand Total All Employees</b>
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<b>155</b>
------------

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled	0	0	0	0	0	0	0	0	0	0	0	0	0	0
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

**WORK FORCE REPORT – Page 3**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

OFFICE(S) or BRANCH(ES): \_\_\_\_\_ COUNTY: \_\_\_\_\_

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black or African-American
- (2) Hispanic or Latino
- (3) Asian
- (4) American Indian or Alaska Native
- (5) Native Hawaiian or Pacific Islander
- (6) White
- (7) Other race/ethnicity; not falling into other groups

Definitions of the race and ethnicity categories can be found on Page 4

TRADE OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

**Grand Total All Employees**

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



## Work Force Report

### HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (American Indian or Alaska Native, Asian, Black or African-American, Native Hawaiian or Pacific Islander, White, and Other) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

### WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report<sup>1</sup>. By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county<sup>2</sup>. If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

### MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report<sup>1, 3</sup>. In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

### TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

### RACE/ETHNICITY CATEGORIES

**American Indian or Alaska Native** – A person having origins in any of the peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

**Asian** – A person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

**Black or African American** – A person having origins in any of the Black racial groups of Africa.

**Native Hawaiian or Pacific Islander** – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

**White** – A person having origins in any of the peoples of Europe, the Middle East, or North Africa.

**Hispanic or Latino** – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.

## Exhibit A: Work Force Report Job Categories – Administration

Refer to this table when completing your firm's Work Force Report form(s).

### Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers  
Business Operations Specialists  
Financial Specialists  
Operations Specialties Managers  
Other Management Occupations  
Top Executives

### Professional

Art and Design Workers  
Counselors, Social Workers, and Other Community and Social Service Specialists  
Entertainers and Performers, Sports and Related Workers  
Health Diagnosing and Treating Practitioners  
Lawyers, Judges, and Related Workers  
Librarians, Curators, and Archivists  
Life Scientists  
Media and Communication Workers  
Other Teachers and Instructors  
Postsecondary Teachers  
Primary, Secondary, and Special Education School Teachers  
Religious Workers  
Social Scientists and Related Workers

### Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers  
Computer Specialists  
Engineers  
Mathematical Science Occupations  
Physical Scientists

### Technical

Drafters, Engineering, and Mapping Technicians  
Health Technologists and Technicians  
Life, Physical, and Social Science Technicians  
Media and Communication Equipment Workers

### Sales

Other Sales and Related Workers  
Retail Sales Workers  
Sales Representatives, Services  
Sales Representatives, Wholesale and Manufacturing  
Supervisors, Sales Workers

### Administrative Support

Financial Clerks  
Information and Record Clerks  
Legal Support Workers

Material Recording, Scheduling, Dispatching, and Distributing Workers  
Other Education, Training, and Library Occupations  
Other Office and Administrative Support Workers  
Secretaries and Administrative Assistants  
Supervisors, Office and Administrative Support Workers

### Services

Building Cleaning and Pest Control Workers  
Cooks and Food Preparation Workers  
Entertainment Attendants and Related Workers  
Fire Fighting and Prevention Workers  
First-Line Supervisors/Managers, Protective Service Workers  
Food and Beverage Serving Workers  
Funeral Service Workers  
Law Enforcement Workers  
Nursing, Psychiatric, and Home Health Aides  
Occupational and Physical Therapist Assistants and Aides  
Other Food Preparation and Serving Related Workers  
Other Healthcare Support Occupations  
Other Personal Care and Service Workers  
Other Protective Service Workers  
Personal Appearance Workers  
Supervisors, Food Preparation and Serving Workers  
Supervisors, Personal Care and Service Workers  
Transportation, Tourism, and Lodging Attendants

### Crafts

Construction Trades Workers  
Electrical and Electronic Equipment Mechanics, Installers, and Repairers  
Extraction Workers  
Material Moving Workers  
Other Construction and Related Workers  
Other Installation, Maintenance, and Repair Occupations  
Plant and System Operators  
Supervisors of Installation, Maintenance, and Repair Workers  
Supervisors, Construction and Extraction Workers  
Vehicle and Mobile Equipment Mechanics,

Installers, and Repairers  
Woodworkers

**Operative Workers**

Assemblers and Fabricators  
Communications Equipment Operators  
Food Processing Workers  
Metal Workers and Plastic Workers  
Motor Vehicle Operators  
Other Production Occupations  
Printing Workers  
Supervisors, Production Workers  
Textile, Apparel, and Furnishings Workers

**Transportation**

Air Transportation Workers  
Other Transportation Workers  
Rail Transportation Workers  
Supervisors, Transportation and Material  
Moving Workers  
Water Transportation Workers

**Laborers**

Agricultural Workers  
Animal Care and Service Workers  
Fishing and Hunting Workers  
Forest, Conservation, and Logging Workers  
Grounds Maintenance Workers  
Helpers, Construction Trades  
Supervisors, Building and Grounds Cleaning  
and Maintenance Workers  
Supervisors, Farming, Fishing, and Forestry  
Workers

**Exhibit B: Work Force Report Job Categories-Trade**

**Brick, Block or Stone Masons**

Brickmasons and Blockmasons  
Stonemasons

**Carpenters**

**Carpet, floor and Tile Installers and Finishers**

Carpet Installers  
Floor Layers, except Carpet, Wood and Hard  
Tiles  
Floor Sanders and Finishers  
Tile and Marble Setters

**Cement Masons, Concrete Finishers**

Cement Masons and Concrete Finishers  
Terrazzo Workers and Finishers

**Construction Laborers**

**Drywall Installers, Ceiling Tile Inst**

Drywall and Ceiling Tile Installers  
Tapers

**Electricians**

**Elevator Installers and Repairers**

**First-Line Supervisors/Managers**

First-line Supervisors/Managers of  
Construction Trades and Extraction Workers

**Glaziers**

**Helpers, Construction Trade**

Brickmasons, Blockmasons, and Tile and  
Marble Setters  
Carpenters  
Electricians  
Painters, Paperhangers, Plasterers and Stucco  
Pipelayers, Plumbers, Pipefitters and  
Steamfitters  
Roofers  
All other Construction Trades

**Millwrights**

Heating, Air Conditioning and Refrigeration  
Mechanics and Installers  
Mechanical Door Repairers  
Control and Valve Installers and Repairers  
Other Installation, Maintenance and Repair  
Occupations

**Misc. Const. Equipment Operators**

Paving, Surfacing and Tamping Equipment  
Operators  
Pile-Driver Operators  
Operating Engineers and Other Construction  
Equipment Operators

**Painters, Const. Maintenance**

Painters, Construction and Maintenance  
Paperhangers

**Pipelayers and Plumbers**

Pipelayers  
Plumbers, Pipefitters and Steamfitters

**Plasterers and Stucco Masons**

**Roofers**

**Security Guards & Surveillance Officers**

**Sheet Metal Workers**

**Structural Iron and Steel Workers**

**Welding, Soldering and Brazing Workers**

Welders, Cutter, Solderers and Brazers  
Welding, Soldering and Brazing Machine  
Setter, Operators and Tenders

**Workers, Extractive Crafts, Miners**

**Exhibit D**

# Surveillance Use Policy

Automated License Plate Recognition (ALPR)  
San Diego Police Department

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## PURPOSE

Automated License Plate Recognition Technology (ALPR) is a component of the San Diego Police Department's crime-fighting strategy that involves the identification of vehicles associated with suspects, witnesses, or victims. ALPR enhances the Department's ability to focus its investigative resources, deter the occurrence of crime, and enhance public safety.

## USE

ALPR systems have proven to be very effective tools in combating crime. The operation and access to ALPR data shall be for official law enforcement purposes only. The legitimate law enforcement purposes of ALPR systems include:

- Locating stolen vehicles, wanted vehicles, or vehicles subject to investigation and,
- Locating vehicles belonging to suspects, witnesses, and victims of a violent crime.

The San Diego Police Department will also use ALPR systems to enhance and coordinate responses to active critical incidents and public threats (e.g., active shooter, terrorist incident), safeguard the lives of community members by using this technology to locate at-risk missing persons (including responding to Amber, Silver, and Feather Alerts) and to protect assets and resources of the City of San Diego.

Any additional technologies, such as facial recognition or gunshot detection, will not be used in conjunction with ALPRs.

When alerted via ALPR that a vehicle is wanted, stolen, or of interest to law enforcement, the user must:

- (1) Visually ensure the plate was read properly and that the state of origin is consistent with the alert.
- (2) Confirm the alert status of the license plate information via the NCIC database. This can be accessed through a secure device (e.g., vehicle laptop, cellular phone, desktop computer, etc.) or by requesting the check through dispatch.

The following uses of ALPRs shall be expressly prohibited:

- To invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- To be used in a discriminatory manner and to target protected individual characteristics, including race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, in accordance with Department Policy 9.33.
- To harass, intimidate, or discriminate against any individual or group.
- To violate any Constitutional rights, federal, state, or local laws (e.g., California Values Act, FACE Act, etc.)



# Surveillance Use Policy

## Automated License Plate Recognition (ALPR) San Diego Police Department

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- To be utilized for any personal purpose.
- To investigate parking violations and conduct traffic enforcement.
- To indiscriminately view video without investigative or administrative need.

Per Department Policy 1.01, all Department members shall comply with all Department Policies and Procedures and are subject to investigation and potential discipline for violations thereof.

Department procedures associated with the use of ALPR are:

- DP 1.49 Body Worn Camera/Evidence.com
- DP 1.51 Automated License Plate Recognition (ALPR)
- DP 3.02 Property Evidence
- DP 3.33 Smart Streetlights

## DATA COLLECTION

The San Diego Police Department will utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public. All data and images downloaded from the ALPR and retained as evidence by the Department are considered investigative records and are for official use only.

It is a violation of this policy to use ALPR technology to capture images and data of vehicles and license plates in a place where an expectation of privacy exists.

The National Crime Information Center (NCIC) is the primary database for the entry and management of wanted vehicles/persons that ALPR technology utilizes, along with Department hot plate/hotlists related to criminal investigations.

Proactive manual entry of ALPR hot plates/hot lists is permitted with license plate information (e.g., BOLO or AMBER alerts) in accordance with this Use Policy. It is the responsibility of the department member who creates the hot plate notification to manage, edit, and delete the plate as necessary.

Any camera adjustments or movements will comply with the Transparent and Responsible Use of Surveillance Technology (“TRUST”) Ordinance.

All ALPR data collection, usage, retention, and release shall be in accordance with applicable State and Federal laws, including, but not limited to, California Civil Code 1798.90.51 through 1798.90.53, as further listed in Department Procedure 1.51.

## DATA ACCESS

Personnel who are authorized to have access to the system shall be designated in writing, and the designation shall ensure that their access to and use of the images and data complies with federal, state, and local laws, including the TRUST Ordinance, as well as applicable Department procedures.



# Surveillance Use Policy

## Automated License Plate Recognition (ALPR) San Diego Police Department

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Personnel using Automated License Plate Recognition (ALPR) technology shall be specifically trained in its operation and authorized by the Chief of Police or their designee. Authorized users include personnel listed in Department Procedure 1.51. Access will also be granted to supervisory staff of authorized users (i.e., sergeants, lieutenants, captains) to ensure users are complying with the Use Policy and Department Procedure.

Recorded data and images may be reviewed in accordance with the following criteria:

- By a Department employee conducting an official investigation.
- By members of the City Attorney's Office or Risk Management in connection with pending litigation.
- Pursuant to lawful process or by court personnel otherwise authorized to view evidence in a related case.
- The Chief of Police has the discretion to allow the viewing or release of data and images if they determine it is in the best interest of the Department.
- As part of Department approved training.

Authorized users under investigation for misconduct or criminal actions related to ALPR shall have their access revoked for the duration of the investigation and shall not have access restored until they have been cleared of wrongdoing.

## DATA PROTECTION

Images and data collected by ALPR technology and retained as evidence shall be stored in a secured law enforcement facility with multiple layers of physical security and security protection. Encryption, firewalls, authentication, and other reasonable security measures shall be utilized to protect ALPR images and data.

All authorized users of ALPR technology shall access the system only through a login/password-protected system capable of documenting all access of information by name, date, and time.

The City's Department of Information Technology oversees the IT governance process and works with SDPD's Department of IT regarding project execution and risk assessment, selecting, and approving technology solutions. For additional details related to the IT governance processes, refer to the information at the following links:

- <https://www.sandiego.gov/sites/default/files/fy23-fy27-it-strategic-plan-sd.pdf>
- <https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/ar/ar9062.pdf>
- <https://www.sandiego.gov/sites/default/files/ar9063.pdf>
- <https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/ar/ar9066.pdf>



# Surveillance Use Policy

Automated License Plate Recognition (ALPR)  
San Diego Police Department

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- <https://www.sandiego.gov/sites/default/files/ar9068.pdf>
- <https://www.sandiego.gov/sites/default/files/ar9074.pdf>

## DATA RETENTION

All ALPR images and data collected and stored on this technology platform shall be purged no later than 30 days from the date it was collected unless the data and image were determined to be evidence, downloaded, and stored pursuant to DP 3.02.

Special Projects and Legislative Affairs will be responsible for conducting a monthly audit to ensure the ALPR operating system is functioning correctly and that all data and images collected by the ALPR technology are appropriately purged.

## PUBLIC ACCESS

DP 1.51 provides information related to the release of images and data from ALPR, including their availability to members of the public via the California Public Records Act (CPRA) process and by criminal defendants utilizing the discovery process as prescribed by law. All data and images downloaded from the ALPR and retained as evidence by the Department are considered investigative records and are for official use only.

A log will be maintained by the Department to document when data and images from ALPRs were researched. The log will be provided by the system administrator upon public request, subject to certain exceptions.

The log will, at a minimum record general information about the incident that was investigated, along with the name of the investigator provided with the recorded images. A log entry that would reveal an ongoing investigation, or jeopardize public safety, will be withheld until this information may be safely released at the direction of the Chief of Police.

## THIRD-PARTY DATA SHARING

All data and images collected from ALPR technology are considered investigative records for the Department and are for official Department use only. The following limitations apply:

- ALPR images and data shall never be voluntarily shared with Immigration and Customs Enforcement or, Border Patrol, or any other law enforcement agency, for the purpose of enforcing immigration laws, in accordance with California Government Code 7284.6 – The California Values Act.
- ALPR images and data shall never be released to aid in the prosecution of an individual for providing, obtaining, or assisting in the provision or obtention of an abortion or any reproductive care, in accordance with California Penal Code 423.2, the California FACE Act and Penal Code 13778.2.



# Surveillance Use Policy

## Automated License Plate Recognition (ALPR) San Diego Police Department

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- ALPR images and data shall never be shared with any federal task forces which involve in any manner the investigation or prosecution of federal crimes for conduct that is permitted under California law.
- ALPR images and data shall never be released to outside sources except the San Diego City Attorney and San Diego District Attorney in accordance with legal proceedings or of law enforcement agencies for the express purpose of investigating crimes in accordance with this Use Policy, until the adoption of a third-party data sharing use policy by the San Diego City Council.

Nothing in this Policy should be interpreted as limiting the use of collected data for legitimate purposes by prosecutors, judicial order, or other persons legally permitted to receive evidence under the law (See Public Access section above).

### TRAINING

All personnel designated as system users shall receive training in the operation of ALPR technology by SPLA Unit personnel and subject matter experts approved by the Department.

All employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy, along with instruction on the constitutional protections (e.g., Fourth Amendment, etc.) and case law requirements associated with its use.

Training will include guidance on the use of ALPR technology and interaction with dispatch and patrol operations, along with a review regarding relevant policies and procedures. Training should also address applicable laws related to the use of video recording equipment and privacy.

All authorized users shall also complete annual refresher training as long as they are authorized to use ALPR technology. If there is a lapse in training, the SPLA Unit will revoke their access until they are in compliance.

The SPLA Unit shall keep records of all training provided to personnel authorized to use ALPR.

### AUDITING AND OVERSIGHT

A list of personnel who are authorized to have access to the system shall be maintained by the SPLA Unit. The authorization document shall ensure that their access to and use of the ALPR technology comply with federal, state, and local laws, the TRUST Ordinance, and applicable Department policies and procedures.

A log shall be maintained that records when access to ALPR images and data is requested, whether the request is internal or external to the San Diego Police Department. This shall include the date, time, data record accessed, staff member involved, case or event number, and purpose of the request. The log shall be available for presentation for all required internal and external audits, the annual report, and internal investigations. Oversight will be maintained by the SPLA Unit.



# Surveillance Use Policy

## Automated License Plate Recognition (ALPR) San Diego Police Department

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Subject to the provisions of this policy, the Chief of Police or their designee has the discretion to prohibit the review of any data and images by Department employees if it is in the best interest of the Department or the City of San Diego.

### **MAINTENANCE**

The San Diego Police Department shall maintain robust security procedures and practices, as noted in the Data Protection section above. These protections shall be in conjunction with those provided by the vendor. The vendor shall include operational, administrative, digital information technology security features and physical safeguards to protect ALPR images and data from unauthorized access, destruction, use, modification, or disclosure.

### **MODIFICATIONS TO THE USE POLICY**

Prior to integration with other technologies, the requesting City department shall come to the City Council for public review and approval in accordance with the Transparent and Responsible Use of Surveillance Technology (TRUST) Ordinance, section 210.0103.

Any modifications to this Policy must come to the City Council for public review and approval in accordance with the TRUST Ordinance, section 210.0103.

**EXHIBIT E**

# Surveillance Use Policy

Smart Streetlight Camera  
San Diego Police Department

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## PURPOSE

The purpose of Smart Streetlights is to help facilitate the investigation of violent crimes, traffic offenses that result in significant injury or the loss of life, and felony property crime, as well as enhance police accountability and increase the overall safety of the community.

## USE

The San Diego Police Department will use video evidence from Smart Streetlights to conduct investigations related to traffic offenses that result in significant injury or loss of life, felony property crime, internal personnel investigations, and the commission or attempted commission of a crime, including but not limited to the following:

- Homicide
- Sexual Assault
- Robbery
- Felony Battery
- Burglary
- Assault with Deadly Weapon
- Motor Vehicle Theft
- Arson
- Human Trafficking
- Child Abuse
- Elder Abuse
- Kidnapping

The San Diego Police Department will also use video from Smart Streetlights to enhance and coordinate responses to active critical incidents and public threats (e.g., active shooter, terrorist incident), safeguard the lives of community members by using this technology to locate at-risk missing persons (including responding to Amber, Silver, and Feather Alerts) and to protect assets and resources of the City of San Diego.

Any additional technologies, such as facial recognition or gunshot detection, will not be used in conjunction with Smart Streetlights.

The following uses of Smart Streetlights shall be expressly prohibited:

- To invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- To be used in a discriminatory manner and to target protected individual characteristics, including race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, in accordance with Department Policy 9.33.
- To harass, intimidate, or discriminate against any individual or group.
- To violate any Constitutional rights, federal, state, or local laws (e.g., California Values Act, FACE Act, etc.)
- To be utilized for any personal purpose.



# Surveillance Use Policy

## Smart Streetlight Camera San Diego Police Department

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- To investigate parking violations and conduct traffic enforcement.
- To indiscriminately view video without investigative or administrative need.

Per Department Policy 1.01, all Department members shall comply with all Department Policies and Procedures and are subject to investigation and potential discipline for violations thereof.

Department Procedures specifically associated with the use of Smart Streetlights are:

- DP 1.49 Body Worn Camera/Evidence.com
- DP 1.51 Automated License Plate Recognition (ALPR)
- DP 3.02 Property and Evidence
- DP 3.33 Smart Streetlights

## DATA COLLECTION

Smart Streetlight technology uses cameras to capture and store images from public spaces where persons do not have an expectation of privacy. All videos downloaded from the Smart Streetlights and retained as evidence by the Department are considered investigative records and are for official use only.

As Smart Streetlights are deployed, they will be positioned to optimize the collection of videos from public places and eliminate the collection of videos from private property. Each camera will have privacy masking to eliminate the recording of private property.

As Smart Streetlights are installed, a member from the Special Projects and Legislative Affairs (“SPLA”) Unit will be required to activate each camera before it becomes operational. Upon activation of a Smart Streetlight camera, the need for privacy masking will immediately be evaluated. If privacy masking is required, the masking will be applied by a member of the SPLA Unit and shall be approved by a SPLA supervisor.

Additional data points such as vehicle and pedestrian movement, bicycle counts, pedestrian counts, and their direction of travel, as well as stationary vehicle detection, will not be collected.

Any camera adjustments or movements will comply with the Transparent and Responsible Use of Surveillance Technology (“TRUST”) Ordinance.

## DATA ACCESS

Personnel who are authorized to have access to the system shall be designated in writing, and the designation shall ensure that their access to and use of the videos and data complies with federal, state, and local laws, including the TRUST” Ordinance, as well as applicable Department procedures.

Personnel using Smart Streetlights shall be specifically trained in the technology and authorized by the Chief of Police, or their designee. Authorized users include personnel listed in Department Procedure 3.33. Access will also be granted to supervisory staff of authorized users (i.e., sergeants, lieutenants, captains) to ensure users are complying with the Use Policy and Department Procedure.



# Surveillance Use Policy

## Smart Streetlight Camera San Diego Police Department

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Recorded videos may be reviewed in accordance with the following criteria:

- By a Department employee conducting an official investigation.
- By members of the City Attorney's Office or Risk Management in connection with pending litigation.
- Pursuant to a lawful process or by court personnel otherwise authorized to view evidence in a related case.
- With approval by the Chief of Police, members reviewing a critical incident, internal review investigation, use of force review, or other internal reviews (e.g., Commission on Police Practices, etc.)
- The Chief of Police has the discretion to allow the viewing or release of recorded files if they determine it is in the best interest of the Department. When appropriate, every effort is made to notify involved employees prior to release.
- As part of Department approved training.

Authorized users under investigation for misconduct or criminal actions related to Smart Streetlights shall have their access revoked for the duration of the investigation and shall not have access restored until they have been cleared of wrongdoing.

## DATA PROTECTION

The City's Department of Information Technology oversees the IT governance process and works with SDPD's Department of IT regarding project execution and risk assessment, selecting, and approving technology solutions. For additional details related to the IT governance processes, refer to the information at the following links:

- <https://www.sandiego.gov/sites/default/files/fy23-fy27-it-strategic-plan-sd.pdf>
- <https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/ar/ar9062.pdf>
- <https://www.sandiego.gov/sites/default/files/ar9063.pdf>
- <https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/ar/ar9066.pdf>
- <https://www.sandiego.gov/sites/default/files/ar9068.pdf>
- <https://www.sandiego.gov/sites/default/files/ar9074.pdf>

Department Procedure 3.33 mandates that videos collected by Smart Streetlights and retained as evidence shall be stored in a secured law enforcement facility with multiple layers of physical and digital security. Encryption, firewalls, authentication, and other reasonable security measures shall be utilized to protect video evidence.



# Surveillance Use Policy

## Smart Streetlight Camera San Diego Police Department

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All Smart Streetlights videos downloaded from a video management solution to a mobile workstation or to digital evidence storage (e.g., Axon Evidence.com) shall be accessible only through a login/password-protected system capable of documenting access by name, date, and time.

### DATA RETENTION

All Smart Streetlights videos collected and stored on this technology platform shall be purged no later than 13 days from the date it was collected unless the video was determined to be evidence, downloaded, and stored pursuant to DP 3.02.

Special Projects and Legislative Affairs will be responsible for conducting a monthly audit to ensure the Smart Streetlight operating system is functioning correctly and that all video data collected by the Smart Streetlight technology was appropriately purged.

### PUBLIC ACCESS

DP 3.33 provides information related to the release of video from Smart Streetlights, including their availability to members of the public via the California Public Records Act (CPRA) process, and by criminal defendants utilizing the discovery process as prescribed by law. All videos downloaded from the Smart Streetlights and retained as evidence by the Department are considered investigative records and are for official use only. Discovery will be provided to criminal defendants as prescribed by law.

A log will be maintained by the Department to document when data from Smart Streetlights was researched. The log will be provided by the system administrator upon public request, subject to certain exceptions.

The log will, at a minimum record general information about the incident that was investigated, along with the name of the investigator provided with the recorded images. A log entry that would reveal an ongoing investigation, or jeopardize public safety, will be withheld until this information may be safely released at the direction of the Chief of Police.

### THIRD-PARTY DATA SHARING

All evidence collected from Smart Streetlights is considered an investigative record for the Department and is for official Department use only. The following limitations apply:

Smart Streetlight's data shall never be voluntarily shared with Immigration and Customs Enforcement or Border Patrol, or any other law enforcement agency, for the purpose of enforcing immigration laws, in accordance with California Government Code 7284.6 – The California Values Act.

Smart Streetlights data shall never be released to aid in the prosecution of an individual for providing, obtaining, or assisting in the provision or obtention of an abortion or any reproductive care, in accordance with California Penal Code 423.2, the California FACE Act and Penal Code 13778.2.

Smart Streetlights data shall never be shared with any federal task forces that are involved in any manner in the investigation or prosecution of federal crimes for conduct that is permitted under California law.



# Surveillance Use Policy

## Smart Streetlight Camera San Diego Police Department

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Smart Streetlights data shall never be released to outside sources, except the San Diego City Attorney and San Diego District Attorney in accordance with legal proceedings or law enforcement agencies for the express purpose of investigating crimes in accordance with this Use Policy, until the adoption of a third-party data-sharing use policy by the San Diego City Council.

Nothing in this Policy should be interpreted as limiting the use of collected data for legitimate purposes by prosecutors, judicial order, or other persons legally permitted to receive evidence under the law (See Public Access section above).

### TRAINING

All personnel designated as system users shall receive training in the operation of Smart Streetlights technology by Special Projects and Legislative Affairs personnel and subject matter experts approved by the Department.

All employees who utilize Smart Streetlights shall be provided a copy of this Surveillance Use Policy, along with instructions on the Constitutional protections (e.g., Fourth Amendment, etc.) and case law requirements associated with its use.

Training will include guidance on the use of cameras, and interaction with dispatch and patrol operations, along with a review regarding relevant policies and procedures. Training should also address applicable laws related to the use of video recording equipment and privacy.

All authorized users shall also complete annual refresher training as long as they are authorized to use Smart Streetlights. If there is a lapse in training, the SPLA Unit will revoke their access until they are in compliance.

The SPLA Unit shall keep records of all training provided to personnel authorized to use the Smart Streetlights.

### AUDITING AND OVERSIGHT

A list of personnel who are authorized to have access to the system shall be maintained by the SPLA Unit. The authorization document shall ensure that their access to and use of the videos comply with federal, state, and local laws, the TRUST Ordinance, and applicable Department policies and procedures.

A log shall be maintained that records when access to Smart Streetlight videos is requested, whether the request is internal or external to the San Diego Police Department. This shall include the date, time, data record accessed, staff member involved, case or event number, and purpose of the request. The log shall be available for presentation for all required internal and external audits, the annual report, and internal investigations. Oversight will be maintained by the SPLA Unit.

Subject to the provisions of this policy, the Chief of Police or their designee has the discretion to prohibit the review of any recordings by Department employees if it is in the best interest of the Department or the City of San Diego.



# Surveillance Use Policy

Smart Streetlight Camera  
San Diego Police Department

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## MAINTENANCE

The San Diego Police Department shall maintain robust security procedures and practices, as noted in the Data Protection section above. These protections shall be in conjunction with those provided by the Smart Streetlight vendor. The vendor shall include operational, administrative, digital information technology security features and physical safeguards to protect Smart Streetlight's video data from unauthorized access, destruction, use, modification, or disclosure.

## MODIFICATIONS TO THE USE POLICY

Prior to integration with other technologies, the requesting City department shall come to the City Council for public review and approval, in accordance with the Transparent and Responsible Use of Surveillance Technology (TRUST) Ordinance, section 210.0103.

Any modifications to this Policy must come to the City Council for public review and approval in accordance with the TRUST Ordinance, section 210.0103.

## EXHIBIT F

### Flock Safety End-User Software License Agreement

This End User Software License Agreement (“**EULA**”) is an attachment to the Service Agreement by and between the City of San Diego (“**Customer**”) and Ubicquia, Inc., dated [--], and shall govern the provision of the Flock Services (as defined in Section 1 hereunder) by Flock Group, Inc. (“**Flock**”). Customer and Flock may be referred to collectively as the “**Parties**” or each individually as a “**Party**.”

#### 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this EULA.

1.3 “**Customer Data**” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4 “**Embedded Software**” means the Flock proprietary software and/or firmware integrated with or installed on the hardware.

1.5 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.6 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.7 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.8 “**Footage**” means still images, video, audio and other data captured in the course of and provided via the Flock Services.

1.9 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.10 **“Installation Services”** means the services provided by Flock for installation of Flock Services.

1.11 **“Permitted Purpose”** means the requirement on Customer to utilize the Flock Services solely for legitimate business purposes, bona fide investigations, prosecution of crime, prevention of commercial or bodily harm, and for the awareness and prevention of crime to the extent permitted by law.

1.12 **“Retention Period”** means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.13 **“Vehicle Fingerprint”** means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.14 **“Web Interface”** means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

## 2. SERVICES, LICENSE AND SUPPORT

2.1 **Provision of Access.** Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form (**“Retention Period”**). Authorized End Users will be required to sign up for an account and select a password and username (**“User ID”**). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of Authorized End User which would constitute a breach of this EULA if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this EULA and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 **Embedded Software License.** Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 **Support Services.** Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality.

2.4 **Upgrades to Platform.** Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock’s products or services to its agencies; the competitive strength of, or market for, Flock’s products or services; such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this EULA.

2.5 **Service Interruption.** Services may be interrupted in the event that: (a) Flock’s provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services

required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("**Service Interruption**"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

**2.6 Service Suspension.** Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("**Service Suspension**"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

### **3. CUSTOMER OBLIGATIONS**

**3.1 Customer Obligations.** Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this EULA, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this EULA. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as "**Customer Obligations**").

**3.2 Customer Representations and Warranties.** Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this EULA and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

#### 4. DATA USE AND LICENSING

4.1 **Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 **Customer Generated Data.** Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer ("**Customer Generated Data**"). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer's intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 **Anonymized Data.** Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

#### 5. CONFIDENTIALITY; DISCLOSURES

5.1 **Confidentiality.** To the extent required by any applicable public records requests, each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this EULA will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such

disclosure to contest such order. At the termination of this EULA, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the EULA. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

**5.2 Usage Restrictions on Flock IP.** Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this EULA. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

**5.3 Disclosure of Footage.** Flock, and/or its vendor or subcontractor, may access, use, and preserve the Footage, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to:

Comply with a legal process or request;

Detect, prevent or otherwise address security, fraud or technical issues; or

Protect the rights, property or safety of Flock, its vendors or contractors, or the public as required or permitted by law, including in response to an emergency.

## **6. FEES**

[RESERVED]

## **7. TERM AND TERMINATION**

**7.1 Term.** The initial term of this EULA shall be for the period of time set forth in the Agreement (the "*Term*").

**7.2 [Reserved]**

**7.3 Survival.** The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 10.1 and 10.6.

## **8. WARRANTY AND DISCLAIMER**

**8.1 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be

temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

**8.2 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6.

**8.3 Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

## **9. LIMITATION OF LIABILITY; INDEMNITY**

**9.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS EULA OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER FOR THE SERVICES UNDER THIS EULA IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

**9.2 Responsibility.** Each Party to this EULA shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this EULA. Each Party to this EULA shall be liable for the torts of its own officers, agents, or employees.

**9.3 Flock Indemnity.** Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this EULA.

**9.4 Customer Indemnity.** To the extent permitted by law, Customer shall indemnify and hold harmless Flock against any damages, losses, liabilities, settlements, and expenses in connection with any claim or action that arises from an alleged violation of Customer Obligations, Customer's sharing of any Customer Data, including any claim that such actions violate any applicable law or third party right.

## **10. MISCELLANEOUS**

**10.1 Compliance with Laws.** Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

**10.2 Severability.** If any provision of this EULA is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this EULA will otherwise remain in full force and effect.

**10.3 Assignment.** This EULA is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this EULA, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

### **10.4 [RESERVED]**

**10.5 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this EULA and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

**10.6 Governing Law; Venue.** This EULA shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this EULA.

**10.7 Feedback.** If Agency or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**10.8 Export.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do

business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this EULA and will be prohibited except to the extent expressly permitted by the terms of this EULA.

**10.9 Headings.** The headings are merely for organization and should not be construed as adding meaning to the EULA or interpreting the associated sections.

**10.10 Authority.** Each of the below signers of this EULA represent that they understand this EULA and have the authority to sign on behalf of and bind the Parties they are representing.

**10.11 [RESERVED]**

**10.12 Public Disrepute.** In the event Customer or its employees become the subject of an indictment, arrest, public disrepute, contempt, scandal or behaves in a manner that, in the reasonable judgment of Flock, reflects unfavorably upon Flock, and/or their officers or principals, licensees, such act(s) or omission(s) shall constitute a material breach of this EULA and Flock shall, in addition to any other rights and remedies available to it hereunder, whether at law or in equity, have the right to elect to terminate this EULA.